

**USC Gould School of Law
MEDIATION ADVOCACY
LAW- 828
SPRING 2020 SYLLABUS**

I. BASIC INFORMATION

A. Course Description

Mediation Advocacy recognizes that many legal disputes are often resolved in mediation. This course introduces students to the process of mediation, explores the philosophical approaches to mediation and different styles of mediating, develops a working knowledge of the stages of mediation, and cultivates students' skills to become effective advocates throughout each stage of the process. Students will learn about mediation both as an independent mechanism and as a strategic tool to resolve litigation. Students will also develop an understanding of the evolving roles of mediators and advocates and establish an appreciation for the legal, ethical, and psychological issues that permeate the process. Through simulated exercises and reflective discussions, students will develop confidence as client representatives and a proficiency in mediation advocacy.

B. Instructor

Professor: Jason C. Marsili
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jmarsili@law.usc.edu or marsili@usc.edu
Office Hours: By Appointment

C. Textbooks

Golann and Folberg, *Mediation: The Roles of Advocate and Neutral* (2d ed. **OR** 3d ed.)¹

D. Time and Place

Wednesdays, 6:00-8:50 PM
Room: 101

E. Credit and Grading

This course will be a 3 unit course lasting for one semester. The course will not be offered as pass/fail.

¹ There are no significant substantive difference between the second and third editions of the textbook.

F. Prerequisites

There are no mandatory prerequisites for this course, however, students who have previously taken Negotiation Theory & Application (or similar negotiation coursework) will have a greater comprehension and command of negotiation elements inherent in the mediation process.

G. Class Recording

Your class will not be routinely recorded. In the event you want a class session to be recorded please send an e-mail to help@law.usc.edu with the date(s), start time(s), end time(s), and room number(s) for the recording(s) you are requesting. Please note that while our Computing staff will do their best to accommodate every request, you should submit any recording requests at least 24 hours before the class session begins.

H. Course Objectives

Through classroom discussion and completion of the assigned readings, students will develop a comprehensive understanding of mediation, including its psychological and theoretical foundations, the philosophical approaches to the process, and the legal and ethical considerations facing mediators and advocates. By participating in simulated exercises, students will develop skills to better represent clients and achieve results through use of the mediation process.

II. COURSE REQUIREMENTS & GUIDELINES

A. Class Preparation and Participation

Class discussions will operate on the assumption that students have completed the assigned readings and are prepared to actively participate. Reading assignments and/or exercise roles for each class will be assigned during the previous class.

B. Attendance and Classroom Behavior

Regular and punctual attendance is expected of all students as well as active participation in classroom discussions and simulated exercises.

C. Grading Criteria

1. Small Group Exercises and Classroom Participation (40%)

Students will be required to participate in simulated mediation exercises focusing on various aspects of the mediation process and engage in classroom discussion reflecting on concepts drawn from the readings.

2. Mediator Selection Exercise (10%)

Students will research, interview, and select a mediator for a dispute from a panel of potential mediators and write a one page statement supporting the selected mediator.

3. Midterm Mediation Brief & Opening Statement (20%)

Students will each individually draft a mediation brief from a case file provided to them and present an opening statement for a mock joint session.

4. Final Mediation Project (30%)

Students will participate as teams in all stages of a mock mediation process, including analysis of the legal claims, management of the client's expectations, drafting the mediation brief, and participation in the mediation session.

- Additionally, selected students will participate in a Mediation Scrimmage via videoconference with students from Cornell University's Scheinman Institute on Conflict Resolution. Students not selected to participate in the scrimmage will observe the mock mediation.

III. TOPICAL OUTLINE

1. Introduction to Course / Review of Syllabus / Overview of the Dispute Resolution Spectrum and Advocacy in Dispute Resolution
2. Origins of Disputes / Principles of Negotiation / Settlement Barriers Inviting Mediation
3. Overview of the Mediation Process / Theoretical and Philosophical Approaches to Mediation
4. The Role of the Mediator / Mediation Styles
5. Strategic Consideration in Selecting the Mediation Process / Explaining the Mediation Process to Clients
6. Cognitive Forces, Emotional Issues, and Merit-Based Barriers to Settlement
7. Vetting Mediators and Mediator Selection
8. Pre-Mediation Exchanges and Preparing to Mediate
9. Drafting the Mediation Brief
10. The Mediation Session from Start to Finish / Joint Sessions / Caucuses / Side Bars

11. Representation Throughout the Mediation Process / Dealing with Difficult Clients
12. Negotiation Tactics in Mediation / Process Skills / Mediator Manipulation
13. Impasse / Memorializing the Mediation Agreement
14. Ethical Issues for Advocates and Mediators and the Law of Mediation

IV. OTHER POLICIES

A. Statement on Academic Integrity

USC seeks to maintain an optimal learning environment. General principles of academic honesty include respect for the intellectual property of others, the expectation that the work submitted represents solely the effort of the person(s) submitting the work (unless otherwise allowed by an instructor), and the obligations both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are required to understand and abide by the Law School's policies and expectations,

<http://mylaw2.usc.edu/portal/policies/handbook/character/plagiarism.cfm>, as well as those of the University, <http://www.usc.edu/student-affairs/SJACS/forms/AcademicIntegrityOverview.pdf>, regarding academic integrity.

B. Reporting Incidents

Discrimination, sexual assault, and harassment are not tolerated by the university. You are encouraged to report any incidents to the *Office of Equity and Diversity* <http://equity.usc.edu/> or to the *Department of Public Safety* <http://capsnet.usc.edu/department/department-public-safety/online-forms/contact-us>. This is important for the safety of the whole USC community. Another member of the university community – such as a friend, classmate, advisor, or faculty member – can help initiate the report, or can initiate the report on behalf of another person. *The Center for Women and Men* <http://www.usc.edu/student-affairs/cwm/> provides 24/7 confidential support, and the sexual assault resource center webpage sarc@usc.edu describes reporting options and other resources.

C. Accommodation of Disabilities

USC is committed to providing reasonable accommodations for members of the student body who have permanent or temporary physical, learning or other disabilities, to ensure that all students are given an equal opportunity for learning and for pursuing their academic interests. Students wishing to seek accommodation should consult the policies and procedures in the Law School Student Handbook, <http://mylaw2.usc.edu/portal/policies/handbook/exceptions/disabilities.cfm>.

D. Support Services

A number of USC's schools provide support for students who need help with scholarly writing. Check with your advisor or program staff to find out more. Students whose primary language is not English should check with the *American Language Institute* <http://dornsife.usc.edu/ali>, which sponsors courses and workshops specifically for international graduate students.